

## **CHAPTER 6. PARK REQUIREMENTS**

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### **6-1-2. General Description**

This Chapter describes the minimum standards that subdivisions must meet for parkland dedication; exempts certain types of subdivisions and lots; and waives the parkland dedication for certain types of developments. (See: 76-3-504(7), MCA)

### **6-1-3. Findings**

The Board of County Commissioners makes the following findings:

- (1) The Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA) specifies which subdivisions must dedicate a part of the subdivision for park purposes or contribute towards the city or county park fund.
- (2) The 1995 Legislature amended the Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA), to exclude minor subdivisions from dedicating parkland (previously only two-lot splits were exempt).
- (3) The 1995 Legislature amended the Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA) to exclude those lots that are 5 acres or larger (previously it was 10 acres or larger).
- (4) The previously mentioned amendments create a financial disincentive for developers to create major subdivisions with lots less than 5 acres in size.
- (5) The creation of residential lots through the subdivision process allows more residences to be built in the county which creates additional need for public recreational areas.
- (6) Rather than mandating a single method to achieve the purposes of this Chapter, it is appropriate to provide some options so that the best development may result.

### **6-1-4. Purpose**

The purpose of this Chapter is to define the park standards and state the permissible uses for the land or cash donation.

### **6-1-5. Park Dedication/Donation Requirements**

- (a) *Generally.* As a condition of filing the final plat, the subdivider shall accomplish one, or any combination, of the following:
  - (1) Make a land donation to the County;
  - (2) Make a cash donation to the County;

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- (3) Reserve land within the subdivision for the recreational uses for those within the development; and/or
- (4) Reserve land for one or more of the following purposes:
  - (a) Protection of critical wildlife habitat;
  - (b) Protection of cultural, historical, or natural resources;
  - (c) Protection of agricultural interests, including preservation of agricultural land and creation of buffers; or
  - (d) Protection of aesthetic values, including open space and scenic vistas. (See: 76-3-621(6)(b), MCA)
- (b) *Exemptions.* The following are exempt from this Chapter:
  - (1) Minor subdivisions in which only one additional parcel is created; or
  - (2) Lots larger than five (5) acres; or
  - (3) Major subdivisions where all the parcels are for nonresidential purposes; or
  - (4) Minor or major subdivisions where parcels are not created, except when that subdivision provides multiple spaces for recreational camping vehicles, mobile homes, or condominiums. (See: 76-3-621(3)(d), MCA)
- (c) *Amount of Dedication In Absence of Master Plan.* In the absence of a master plan that includes density requirements, the total amount of land or cash donation or land dedication or any combination thereof shall be based on the size of the proposed lots with the proposed subdivision as shown in the following table:

Table 6-1-1.  
Park Dedication/Donation Worksheet

	Lots 0.5 Acres or Smaller	Lots Larger than 0.5 Acre to 1.0 Acre	Lots Larger than 1.0 Acre to 3.0 Acres	Lots Larger than 3.0 Acres to 5.0 Acres	Lots Larger than 5.0 Acres	Total
A. Number of Lots						
B. Total Number of Acres (Round to the nearest tenth)						
C. Park Standard Stated as a Percentage of Total Lot Area	11.0 Percent	7.5 Percent	5.0 Percent	3.5 Percent	N/A	N/A
D. Area Requirement in Acres (Multiply Row B by Row C and round to the nearest hundredths)					0.00	
E. Area Requirement in Acres (Transfer the Total from Row D) If zero, no dedication is required. If greater than zero, complete Lines F through K.						
F. Proposed Land Donation to the County in Acres						

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G. Proposed Land Dedication in Acres	
H. Total Land Donation and Dedication in Acres (Add F and G)	
I. Difference (Subtract H from E) If answer is zero, no cash donation is required. If answer is a negative value, then the amount of land donation and/or land dedication exceeds the required park standards. If answer is a positive value, complete remainder of Worksheet to determine cash donation.	
J. Fair Market Value of One Acre (Refer to Section 6-7)	
K. Cash Donation (Multiply I by J)	

(See: 76-3-621, MCA)

- (d) *Amount of Dedication With Master Plan.* When the County adopts a master plan which includes density requirements, the Board of County Commissioners may establish park dedication requirements based on community needs, but may not exceed 0.03 acres per dwelling unit. (See: 76-3-621(2), MCA)
- (e) *Basis of Decision for Type of Dedication.* After consultation with the subdivider and the Park Board, the Board of County Commissioners shall determine whether the park requirement shall be met by a land donation, cash donation, land dedication, or any combination thereof. (See: 76-3-621(4), MCA) Such determination shall balance the following considerations:
- (1) Expressed preference of the subdivider; (See: 76-3-621(4), MCA)
  - (2) Consistency with the Growth Policy, specifically the recreation and open space chapters;
  - (3) Significance of the land donation or land dedication for its intended purpose. For example, if land is being dedicated for aesthetic qualities, then it should be readily apparent that the proposed land dedication is a valuable asset to the county and preserves important aesthetic qualities;
  - (4) Suitability of the land donation or land dedication for its intended purpose (e.g. parcel size, topography, shape, location, aesthetic qualities, or other circumstance.)
- (f) *Location of Land Donation or Land Dedication.* The land being donated or dedicated in fulfillment of this section can be either located:
- (1) within the subject property, or
  - (2) on another parcel, provided the subdivider agrees to such arrangement and the land dedication is within close proximity to the proposed subdivision,
  - (3) subject to the approval of the BCC and acceptance by the local school district trustees, a subdivider may dedicate a land donation to a school district, adequate to be used for school facilities or buildings.
- (g) *Requirement for Land Dedication.* As a condition of filing the final plat, the subdivider shall preserve or otherwise protect the land dedication for the intended purpose. When land is dedicated for recreational purposes, the dedication shall be permanent and when land is dedicated for other permissible uses as outlined in Section 6-5(a), the dedication shall provide for long-term protection of the resource. For example, if land is being dedicated for its open space qualities,

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then the subdivider must use a conservation easement, deed restriction, or other mechanism that is acceptable to the County, to limit or prohibit development on the dedicated land to preserve the open space qualities. (See: 76-3-621(6)(a) and (6)(b), MCA)

**6-1-6. Use of Land and Cash Donation**

- (a) *Generally.* The County shall use the land or cash donation for the development, acquisition, or maintenance of parks to serve the subdivision. (See: 76-3-621(5)(a), MCA)
- (b) *Use of Land Donation.* The County shall hold, manage, develop, and maintain donated lands for recreational purposes consistent with the Growth Policy, unless it is disposed of consistent with the Growth Policy. (See: 76-3-621(5)(a), MCA)
- (c) *Use of Cash Donation.* The cash donation shall be deposited in the County Park Fund and shall be used to acquire, develop, or maintain parks and recreational areas within the county and/or to purchase public open space or conservation easements within the county provided:
  - (1) the park, recreational area, open space, or conservation easement is within close proximity to the proposed subdivision;
  - (2) the County has a formally adopted park plan that establishes the needs and procedures for use of the money; and
  - (3) no more than 50 percent of the dedicated money can be used for park maintenance. (See: 76-3-621(5)(b) and (5)(c), MCA)

**6-1-7. Methods to Determine Fair Market Value**

- (a) The cash donation in-lieu of land dedication shall be equal to the fair market value of the amount of land that would have been statutorily required to be dedicated. For the purpose of these regulations, the fair market value is the value of the unsubdivided, unimproved land based upon comparable sales that apply to the proposed subdivision. Fair market value shall be determined by a Montana State licensed general real estate appraiser or a real estate appraiser legally qualified to appraise undeveloped land (as provided under M.C.A. 37-54-201 et seq) hired and paid for by the subdivider. A copy of the appraisal report shall be provided to the governing body for calculating the cash-in-lieu donation prior to final plat approval.
- (b) *Independent Appraisals.* The Board of County Commissioners may request an additional appraisal by a Montana State licensed general real estate appraiser or a real estate appraiser legally qualified to appraise unsubdivided, undeveloped land (as provided under M.C.A. 37-54-201 et seq) and set the market value after considering both determinations.

**6-1-8. Waivers of Park Dedication Requirement**

- (a) The BCC may waive the park dedication requirement if the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and or exceeds the area of the required dedication.
- (b) The BCC shall waive the park dedication requirement if:

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- (i) the preliminary plat provides for a development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the required dedication in Section 6-1-5;
- (ii) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the required dedication in Section 6-1-5;
- (iii) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (b)(i) and (b)(ii), is reduced by an amount equal to or exceeding the area of the required dedication in Section 6-1-5; or
- (iv) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of required dedication in Section 6-1-5.